The trial judge held that the defendant was negligent and dismissed the defence of contributory negligence based on paragraph 3A of the amended defence in the following words: —

"... all that I would say is that there is as yet no statutory regulation requiring motor cyclists to wear crash helmets. The Highway Code is also, I believe, silent on this point. I find no contributory negligence on the part of the first plaintiff for not wearing a crash helmet. The defendant is entirely to be blamed for this accident".

The trial judge then went on to deal with the quantum and awarded a global sum as compensation for the first plaintiff's injuries of $115,000 but indicated that the amount of compensation for the pain and suffering and loss of the amenities of life "should be in the region of between $30,000 and $35,000", and for loss of prospective earnings ought to be based on an average of about $100 per month, and should be in the region of $80,000 to $85,000.

The defendant now appeals on two grounds which are: —

"1. The learned trial judge treated the fact that the first plaintiff was not wearing a crash-helmet at the material time as one relevant only to the issue of culpability whereas it was relevant also to the question of compensation. The learned trial judge ought to have found as a matter of law that there was a duty upon the first plaintiff to mitigate the damages flowing from the defendant's negligence and that, as a matter of fact, the failure to wear crash-helmet constituted a failure to discharge that duty.

2. The quantum of damages awarded to the first plaintiff by the learned trial judge represented a wholly erroneous estimate of the amount which ought to have been awarded to him".

Counsel for the appellant argued the first ground in this way. He submitted, having regard to the fact that we are in Singapore a highly urbanised community and to the present day road conditions in Singapore, that it is unsafe for a motor cyclist and therefore negligent on his part to ride a motor cycle without wearing a crash helmet as a protection from head injury if he is involved in a collision. He contends that in law such a person owes a duty to himself to mitigate the damages he may suffer through the negligence of other users of the road and that, as a matter of fact, the first plaintiff's failure to wear a crash helmet constituted a failure to discharge that duty.

So far as the proposition of law is concerned it is admitted that there is as yet no decided authority in support of it and counsel frankly invited us "to make new law". We are of the opinion, however, that if we accept the proposition put forward by counsel we would be making bad law for in law there can be no duty on a person to minimise the effects or probable consequences of any injury he may suffer, but which he has not as yet suffered, through the negligence of another. The law is clear that just as actionable negligence requires the foreseeability of harm to others, so contributory negligence requires the foreseeability of harm to oneself. In our opinion, for a motor cyclist to ride a motor cycle without wearing protective headgear such as a crash helmet cannot, as a matter of law, constitute a failure on his part, acting as a reasonably prudent man would act, to foresee that he might cause harm to himself. It may well be that a reasonably prudent man would foresee that the wearing of a crash helmet might result in less harm being caused by someone else to him if he is involved in a collision while riding a motor cycle.

In any event, there was no evidence at all before the trial judge that the head injury suffered by the first plaintiff would have been less serious if he had been wearing a crash helmet at the time of the accident. The onus was on the defendant on paragraph 3A of his amended defence to introduce such evidence so as to enable the trial judge to make a finding of fact on this issue.

With regard to the second ground of appeal, counsel for the appellant accepts the trial judge's estimate of between $30,000 and $35,000 for pain and suffering and loss of amenities but contends that the figure of between $80,000 and $85,000 for loss of prospective earnings was so excessive as to amount to a wholly erroneous figure. He relies entirely on awards made by English judges in English courts and submits that on the evidence a more correct figure should be somewhere in the region of $50,000.

We have already set out in full the medical evidence. The trial judge on that and the other evidence before him was of the view that the first plaintiff "would in all probability have ended up in life doing a more responsible and consequently a more lucrative sort of work than that of an ordinary clerk". We accept this assessment and indeed it has not been questioned by the appellant. We also accept, as did the trial judge, Professor Ransome's opinion that as a result of the accident, he would find difficulty in securing the job of even a despatch clerk in the open employment market. It was also never in dispute that his expectation of life was not affected by the injuries he has suffered.

Having regard to all these factors, although each of us would have awarded a lower figure than $80,000 as damages, for loss of prospective earnings, we are unanimous in the view that the trial judge's estimate was not wholly erroneous and that, therefore, the global award of $115,000 was also not wholly erroneous.

For all these reasons, we would dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *M. P. D. Nair; Murphy & Dunbar.*

CHUA CHONG CHER v. TEO LANG KEOW & ORS.

[C.A. (Wee Chong Jin C.J. (Singapore), Tan Ah Tah & Chua JJ.) February 9, 1970]

[Singapore — F.C.C.A. No. Y27 of 1969]

Negligence — Finding of fact by trial judge — Not based on demeanour — Duty of appellate court to rehear the case by examining the evidence.

Road Traffic — Accident — Finding of fact — When appellate court may rehear case.

Practice and Procedure — Appeal — Duty of appellate court to rehear case by examining evidence.

In this case the undisputed facts were that the appellant stopped his motor cycle in the middle of River Valley Road intending to turn right into Leonie Hill Road. A Hock Lee bus was coming from the opposite direction along River Valley Road and a Tay Koh Yat bus was also coming along the same road but from behind him. On reaching the appellant's motor cycle the Tay Koh Yat bus suddenly swerved to its right collided with the motor cycle and went to the wrong side of the road and collided with the Hock Lee bus. As a result of the collison between the two buses, the first respondent who was a passenger in the Hock Lee bus sustained personal injuries. It was admitted at the trial that the driver of the Hock Lee bus was not to blame at all. The learned trial judge rejected the evidence of the appellant that he stopped at the middle of the junction and found that he had swerved to his left across the path of the Tay Koh Yat bus. He said that if the appellant had been stationary in the centre of the road he would have been killed on the spot and he disbelieved the appellant because according to him the appellant continually shifted his ground on the evidence. He therefore found that the appellant was solely to blame for the accident.

Held, allowing the appeal: in the circumstances of the case the version of the appellant was the more probable one as against that of the bus driver. A court ought to consider, from undisputed facts, whether a version put as evidence is one which is inherently improbable or not. The conclusion of the trial judge as to the likelihood of the appellant being killed if he had remained standing was a mere conjecture and his conclusion on the credibility of the appellant could not be supported.

COURT OF APPEAL.

D. H. Murphy for the appellant.

A. S. K. Wee for the 3rd respondent.

Chua J. (delivering the judgment of the court): At the conclusion of the hearing we allowed the appeal indicating that we would give our reasons at a later date. We now proceed to do so.

The first respondent, a passenger in a bus No. SH. 706 belonging to the second respondent, was injured as a result of a collision between bus No. SH. 706 and a bus No. SH. 190 belonging to the third respondent. She brought an action in the High Court against the first and second respondents as well as against the appellant, the owner and rider of motor cycle No. SAG. 3250 which was also involved in the same collision. The first respondent alleged her injuries were caused by the negligent driving of the servant of the second respondent, or alternatively by the negligent driving of the servant of the third respondent, or alternatively by the negligent riding of the appellant or alternatively on the part of any two or all of them.

The High Court gave judgment for the first respondent in the sum of $5,500 against the appellant the owner of the motor cycle and dismissed with costs the claim against the second and third respondents. It was ordered that the first, second and third respondents' costs of the action as between party and party be taxed and paid by the appellant.

The appellant appeals against that part of the learned judge's decision with regard to liability.

The undisputed facts were shortly these. The appellant stopped his motor cycle in the middle of River Valley Road intending to turn right into Leonie Hill Road. Bus SH. 706 (hereinafter referred to as the Hock Lee bus) was coming from the opposite direction along River Valley Road. Bus SH. 190 (hereinafter referred to as the Tay Koh Yat bus) was coming along River Valley Road behind the appellant's motor cycle. On reaching the appellant's motor cycle the Tay Koh Yat bus suddenly swerved to its right collided with the motor cycle and went to the wrong side of the road and collided into the Hock Lee bus. As a result of the collision between the two buses the first respondent, who was a passenger in the Hock Lee bus, sustained personal injuries.

During the trial it was conceded by the appellant that the driver of the Hock Lee bus was not to blame at all. The third respondent similarly attributed no fault to the driver of the Hock Lee bus. The contest was then between the appellant and the third respondent. The learned trial judge said:

"The sole question in issue was whether the bus driver of the Tay Koh Yat bus (of the second defendant) who was travelling along his correct side of the road down River Valley Road away from the City down a slight slope or the third defendant, motorcyclist, who had previously been travelling down the same slope ahead of the bus or both were to blame for the collision which occurred between the two buses. The Hock Lee bus had been all along travelling on its own correct side of the road in the opposite direction."

The evidence of the appellant was that he was stationary in the middle of the road. He heard a loud sound behind him. When he turned his head round to look, the Tay Koh Yat bus came and collided into him and then went to the other side of the road and collided into the Hock Lee bus.

The driver of the Tay Koh Yat bus said that he was travelling behind a lorry at a speed of between 15 to 20 m.p.h. He saw a motor cycle in the middle of the road waiting to turn right into Leonie Hill Road. After the lorry had passed the motor cycle, on the motor cycle's left, and when he was 7 to 10 ft. from the motor cycle, the motor cycle suddenly swerved left across his path. He swerved violently to the right to avoid colliding with the motor cycle and went to the wrong side of the road and on seeing vehicles approaching from the front he swerved to the left and there was a collision with the Hock Lee bus which was coming from the opposite direction.

The driver of the Hock Lee bus said that he did not see any other vehicle involved in the accident and he did not know why the Tay Koh Yat bus swerved to its right.

The learned trial judge found that the appellant swerved to his left across the path of the Tay Koh Yat bus and he found that the appellant was solely to blame for the accident. In his grounds of decision the learned judge said:

"All things considered, I found that the third defendant was not stationary in the centre of the road when hit. If he had been he would have been killed on the spot. I found that for reasons best known to himself or as a result of his inexperience he changed his mind about entering Leonie Hill Road to his right and swerved to his left across the path of the bus driver who had no alternative except to swerve to the right himself."

It must be borne in mind that this claim is by a passenger who was travelling in the Hock Lee bus and that the collision was between the two buses. It

was the Tay Koh Yat bus that went to the wrong side of the road and collided into the Hock Lee bus. The onus, therefore, rests upon the third respondent to show that the Tay Koh Yat bus went to the wrong side of the road without any negligence on the part of their driver.

The main question is, has the third respondent discharged that onus? In our view they have not.

The trial judge accepted the evidence of the driver of the bus and rejected the evidence of the motor cyclist on the ground that if the motor cyclist had remained stationary he would have been killed on the spot and also that he was a most evasive witness who continuously shifted his ground. The trial judge accordingly preferred the version given by the driver of the bus.

It is clear, therefore, that the trial judge did not base his preference for the version of the driver of the bus on demeanour and furthermore this court, as an appellate court, is under a duty to re-hear the case by examining the evidence and arriving at its own finding, but always bearing in mind it has neither seen nor heard the witnesses and paying due regard to the trial judge's finding and his reasons therefor. The fact that the motor cyclist would have died on the spot had he remained stationary is a conclusion which, in our opinion, cannot be supported on the evidence before him. That conclusion seems to us to be a matter of pure conjecture. Again the conclusion of the trial judge that the motor cyclist continuously shifted his ground in his evidence cannot be supported. He told a simple story from beginning to end namely that he remained stationary on the middle of the road waiting to turn right into Leonie Hill Road when he was hit by the bus and thrown clear to the left.

The question remains, which version is the more probable of the two? It is impossible to accept as true or possible the bus driver's evidence that travelling at a speed of between 15 to 20 m.p.h., his bus not more than 7 to 10 feet from the motor cyclist, stationary on the middle of the road, that the motor cyclist could swerve left suddenly and be across the path of his bus and that he could manage to, at the same time, swerve violently right and manage to strike a mere glancing blow on the motor cycle.

As often happens, a court on the evidence before it, has to decide which of two conflicting versions is the version to accept. In such a case, a court in considering which is the more probable one, ought to try and derive what assistance it can get from undisputed facts, if any, which are relevant for the purpose. A court also ought to consider, from undisputed facts, whether a version put forward as evidence is one which is inherently improbable or not.

For all these reasons, we had no hesitation at the conclusion of the hearing in coming to the conclusion that the motor cyclist's version was the more probable one and accordingly we allowed the appeal.

Appeal allowed.

Solicitors: *Murphy & Dunbar; A. S. K. Wee.*

CHUA BEOW HUAT v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) February 27, 1970]

[Malacca — Criminal Appeal No. 11 of 1968]

Evidence — Statement to customs officer — Whether admissible — Judges' Rules — Customs Ordinance, 1952, ss. 115 & 131(2) — Evidence Ordinance, 1950, ss. 24, 25 & 26.

Customs and Excise — Statement to customs officer — Customs Ordinance, 1952, ss. 115 & 131(2).

Criminal Law and Procedure — Presumption — Customs cases — Burden of proof.

Legislation — Express provision of statute — Legal maxims — Importance of — Reduction and modification.

The appellant had been convicted of importing dutiable goods on which duty had not been paid. On appeal, one of the grounds of appeal was that a statement to a customs officer by the appellant had been wrongly admitted in evidence. It was argued that the statement was not admissible under section 24 of the Evidence Ordinance and that there was a breach of the Judges' Rules in obtaining the statements of the appellant.

Held, dismissing the appeal: (1) "customs officers" are not police officers for the purposes of sections 25 and 26 of the Evidence Ordinance;

(2) there was no evidence in this case to show that the statements had been made as a result of any inducement, threat or promise and therefore the statements were not inadmissible under section 24 of the Evidence Ordinance;

(3) there is no rule whether of law or practice which require a customs officer in this country to follow the Judges' Rules framed by the judges in England.

Per curiam: In giving his grounds of judgment the learned magistrate (or the learned president) should briefly state the matters both of fact and law which he considered, the care which he exercised in considering those matters, and the extent and nature of doubt, if any, created in his mind. He should discuss the evidence and the probabilities arising from the circumstances of the case. The reasons for his findings should be stated. The grounds should indicate that he had in fact applied his mind to the evidence produced in the case.

Cases referred to:-

(1) *Saminathan & Ors.* v. *Public Prosecutor* [1955] M.L.J. 121.

(2) *Public Prosecutor* v. *Tay Yam Peng* [1951] M.L.J. 144.

(3) *Man Woo* v. *Rex* [1951] M.L.J. 20.

(4) *Soni Vallabhdas Liladhar* v. *The Assistant Collector of Customs* A.I.R. 1965 S.C. 481.

(5) *Brown* v. *Dunn* (1893) 6 The Reports 67.

(6) *A.E.G. Carapiet* v. *A.Y. Derderian* A.I.R. 1961 Cal. 359.

(7) *William Charles Cowell* 27 Cr. App. R. 191.

(8) *Public Prosecutor* v. *Soh Tuan Cheung* [1949] M.L.J. 261.

(9) *Chye Ah San* v. *Regina* [1954] M.L.J. 217.

(10) *Regina* v. *Bass* 37 Cr. App. R. 51; [1953] 1 Q.B. 680.

(11) *The King* v. *Voisin* [1918] 1 K.B. 531.

(12) *Cheong See Leong* v. *Public Prosecutor* [1948-49] M.L.J. Supp. 56.

(13) *Cheng Seng Heng & Ors.* v. *Public Prosecutor* [1949] M.L.J. 175.

(14) *Ah Soi* v. *King Emperor* A.I.R. 1926 Cal. 922.

(15) *R.* v. *Czerwinski* [1954] A.L.R. 621.

(16) *Regina* v. *Camborne Justices Ex parte Pearce* [1954] 2 All E.R. 850.

(17) *The Queen* v. *Farrant* (1887) 20 Q.B.D. 58.

(18) *The Queen* v. *Rand* (1866) 1 Q.B.D. 230.